

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Pennsylvania

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable, States should include definitions of living will, durable powers of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

**See Medical Assistance Bulletin:
Effective June 19, 1998**

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MEDICAL ASSISTANCE BULLETIN

COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF PUBLIC WELFARE

ISSUE DATE

June 19, 1998

EFFECTIVE DATE

June 19, 1998

NUMBER

See Below

SUBJECT

Revised Medical and Treatment
Self-Directive Statement

BY

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Purpose:

To issue an updated copy of the advance care directive description which must be distributed to patients or residents in your care.

Scope:

This bulletin applies to hospitals, nursing facilities, home health agencies, hospices, and managed care organizations participating as providers or seeking to enroll as providers in the Pennsylvania Medical Assistance Program.

Background/ Discussion:

Congress enacted the Patient Self-Determination Act in 1990. Under this Act, the Commonwealth must provide you with a statement which describes the current Pennsylvania law on "advance directives."

This bulletin replaces bulletins: 11-92-10, 12-92-10, 13-92-06, 14-92-03, 17-92-02, 23-92-03, 34-92-06, 35-92-08, 36-92-08, 37-92-01, 38-92-01, and 53-92-04; issued June 23, 1992, titled "Patient Self-Determination Act: OBRA-90 (Revised)" The attached information entitled "Your Rights as a Patient in Pennsylvania: Making Decisions About Your Care and Treatment" contains revisions to the previously issued directive and includes a written description of all current Pennsylvania law (Acts 24 and 152 of 1992, and Act 102 of 1994) concerning advanced directives. Most notably, the new written description notes that all powers of attorney are deemed to be durable, and that individuals may designate whether they wish to make an anatomical gift of all or part of their body in their advance directives.

11-98 -04

12-98 -04

13-98 -02

14-98 -02

17-98 -04

23-98 -07

34-98 -02

35-98 -08

36-98 -08

37-98 -01

38-98 -01

53-98 -03

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Bureau of Program Policy and Services Development
PO Box 8043

Call the appropriate
or Toll free number for

YOUR RIGHTS AS A PATIENT IN PENNSYLVANIA: MAKING DECISIONS ABOUT YOUR CARE AND TREATMENT

I. INTRODUCTION

In Pennsylvania, competent adults have the right to decide whether to accept, reject or discontinue medical care and treatment. If you do not wish to undergo a certain procedure or to receive a certain type of treatment, you have the right to make your wishes known to your doctor or other health care provider and generally to have those wishes respected.

There may be times, however, when a person cannot make his or her wishes known to a health care provider. For example, a person may be unconscious or too badly injured to tell his or her doctor what kind of care or treatment he or she would like to receive or under what circumstances that doctor should withhold care or treatment.

The purpose of this document is to let you know what the law currently has to say about your rights as a competent adult to make your wishes known regarding whether or not you want to receive types of care and treatment. This document tells you your options on how to tell people ahead of time how you would like to receive medical care and treatment from a health care provider in the event that you need medical attention but become physically or mentally unable to give instructions about your care and treatment later on. It also tells you what Pennsylvania law has to say about the duty of a health care provider to follow your advance instructions.

To make these complex issues easier to understand, they are addressed through a series of questions and answers. Before you make any decisions about the issues addressed in this document, you may wish to discuss them with your doctor, members of your family, close friends, and where appropriate, your lawyer.

II. QUESTIONS AND ANSWERS

GENERAL INFORMATION ABOUT YOUR RIGHTS

1. *What are my rights to accept, reject or stop medical care or treatment?*

In Pennsylvania, adults generally have the right to decide if they want to accept, to reject or to discontinue medical care and treatment. In order to protect and safeguard this right, however, it may be necessary to execute an advance directive for health care (also known as a living will) and/or a durable power of attorney for health care. For example, under a criminal law known as Act 28 of 1995, caretakers such as owners, managers, or employees of nursing homes and other health care institutions

LIVING WILLS

6. *What is a living will?*

In Pennsylvania, a living will is a written document that describes the kind of life-sustaining treatment you want or do not want if you are later unable to tell your doctor what kind of treatment you wish to receive. For your convenience, we have attached a sample living will to this pamphlet.

It is important for you to know that Pennsylvania's living will law does not recognize all types of instructions which might be contained in a person's living will. Rather, instructions must relate to situations where medical treatment would serve only to prolong the process of dying or to maintain you in a state of permanent unconsciousness. **A living will would apply only in cases where your condition or illness is terminal or you are permanently unconscious.** So, for example, Pennsylvania does not specifically recognize living wills which direct a health care provider to withhold medically beneficial, nonfutile care.

You should also understand that a living will is not a last will and testament. A last will and testament tells your survivors what to do with your property after your death.

7. *Who can make a living will?*

Any competent person can make a living will who: 1) is at least 18 years old; 2) is a high school graduate; or 3) is married.

8. *When does a living will take effect?*

A living will only takes effect when:

- (1) your doctor has a copy of it; **and**
- (2) your doctor has concluded that you are incompetent and therefore no longer able to make decisions about the medical care you wish to receive; **and**
- (3) your doctor and a second doctor have determined that you are in a terminal condition or in a state of permanent unconsciousness.

9. *What does it mean to be "incompetent"?*

"Incompetence" means "the lack of sufficient capacity for a person to make or

to your doctor or to those in charge of your medical care and treatment.

If you are incompetent when you are admitted for medical care and have named someone in your living will to make decisions for you, that person must be informed if the wishes contained in your living will cannot be honored. If you have not named anyone in your living will, your family, guardian or other representative must be informed that your living will cannot be honored.

The doctor or other health care provider who cannot honor your wishes must then help transfer you to another health care provider willing to carry out your directions -- if they are the kind of directions which Pennsylvania recognizes as valid. It is advisable, as soon as possible after you have written your living will, to make sure your doctor will follow your wishes as stated in your living will.

14. *Is a living will effective when I am pregnant?*

Pennsylvania law generally does not permit a doctor or other health care provider to honor the living will of a pregnant woman who has directed that she not be kept alive. The terms of such a living will may be honored, however, if the woman's doctor determines that life-sustaining treatment: 1) will not maintain the woman in a manner that will allow for the continued development and birth of the unborn child; 2) will physically harm the pregnant woman; or 3) cause her pain which could not be relieved by medication.

If your living will is not honored because you are pregnant, the Commonwealth must pay all usual, customary and reasonable expenses of your care.

15. *What if I change my mind after I have written a living will?*

Pennsylvania's living will law states that you may revoke a living will at any time and in any manner. All that you must do is tell your doctor or other health care provider that you are revoking it. Someone who saw or heard you revoke your living will may also tell your doctor or other health care provider.

You can also change or rewrite your living will. If you change your mind after you have written down your instructions, you should destroy your written instructions and all copies or revoke them and write new ones. You should also consider telling everyone who participated in your decision-making process that you have changed your mind and give a copy of any new instructions to your doctor, health care provider, and anyone else who had a copy of your old instructions.

(2) **A durable power of attorney for health care** is designed to give your named representative the authority to make all sorts of medical care decisions for you, such as whether you should be admitted to a particular kind of health care facility. **A living will**, on the other hand, is generally used to tell your health care provider what kind of medical care and treatment you want to receive or not receive in the event you become unable to tell the provider yourself.

(3) It is unclear if your representative under a durable power of attorney for health care can refuse or stop life-sustaining treatment for you; a living will clearly can be used for that purpose.

19. ***May I have both a durable power of attorney for health care and a living will?***

Yes, you may have both in either one document or in separate documents, although having both in one document may be recommended in many cases. There are certain factors you should consider in making the decision to have both, or either one of these documents.

Because the grant of powers in a durable power of attorney for health care may be very broad and will continue even if you become incompetent, it is very important that you exercise great care in both selecting the person to be your attorney-in-fact and in spelling out the power and guidelines for the attorney-in-fact to follow. While the grant of powers in a living will is more specific, great care should still be taken in both writing your living will and especially in selecting a surrogate if you decide to select one.

ANATOMICAL GIFTS

20. ***What if I wish to donate my organs or other body parts after my death? Can I include this wish in my living will?***

Yes. If you are at least 18 years old, you may make an anatomical gift of the entire body or of body parts (including organs, tissues, eyes, bones, arteries, or blood) by expressing an intent to do so in your living will. You may also grant your attorney-in-fact the specific power to make an anatomical donation in a durable power of attorney for health care.

whether you have written such a document. Moreover, under Pennsylvania law, no health care provider or insurer may charge a different fee or rate depending on whether you have executed a living will.

26. ***Are living wills and durable powers of attorney which were written in other states recognized in Pennsylvania?***

The law in Pennsylvania is unclear. It is possible, however, that at the very least your doctor, hospital or a judge may use such documents to determine who will make decisions about your care and what those decisions will be.

27. ***Who should I contact if I have more questions about living wills or durable powers of attorney for health care.***

In addition to a lawyer, there are many individuals and groups that can provide you with information about such documents. Here are some that you may wish to consult:

(1) Your local long term care ombudsman, who can be reached by calling your community's Area Agency on Aging. The telephone number is in the blue pages of your telephone book.

(2) Office of the State Long Term Care Ombudsman
PA Department of Aging
400 Market Street, 7th Floor
Harrisburg, PA 17101-2301 (717) 783-7247

(3) Pennsylvania Counsel on Aging
400 Market Street, 6th Floor
Harrisburg, PA 17101-2301 (717) 783-1924

(4) American Association of Retired Persons (AARP)
225 Market Street
Harrisburg, PA 17101 (717) 238-2277

LIVING WILL DECLARATION

I, _____, being of sound mind, willfully and voluntarily make this declaration be followed if I become incompetent. This declaration reflects my firm and settled commitment to refuse life-sustaining treatment under the circumstances indicated below.

I direct my attending physician to withhold or withdraw life-sustaining treatment that serves only to prolong the process of dying, if I should be in a terminal condition or in a state of permanent unconsciousness.

I direct that treatment be limited to measures to keep me comfortable and to relieve pain, including any pain that might occur with withholding or withdrawing life-sustaining treatment.

In addition, if I am in the condition described above, I feel especially strong about the following forms of treatment:

- I ☐ do ☐ do not want cardiac resuscitation.
- I ☐ do ☐ do not want mechanical respiration.
- I ☐ do ☐ do not want tube feeding or any other artificial or invasive form of nutrition (food) or hydration (water).
- I ☐ do ☐ do not want blood or blood products.
- I ☐ do ☐ do not want any form of surgery or invasive diagnostic tests.
- I ☐ do ☐ do not want kidney dialysis.
- I ☐ do ☐ do not want antibiotics.

I realize that if I do not specifically indicate my preference regarding any of the forms of treatment listed above, I may receive the form of treatment. Other instructions:

- I ☐ do ☐ do not want to designate another person as my surrogate to make medical treatment decisions for me if I should be incompetent and in a terminal condition or in a state of permanent unconsciousness.

Name and address of
surrogate
(if applicable)

Name and address of
substitute surrogate
(if surrogate designated is
unable to serve)

- I ☐ do ☐ do not want to make an anatomical gift of all or part of my body, subject to the following limitations, if any:

I made this declaration on the _____ day of _____, 19____.

Declarant's Signature: _____
Declarant's Address: _____

The declarant or the person on behalf of and at the direction of the declarant knowingly and voluntarily signed this writing by signature or mark in my presence.

Witness's Signature: _____
Witness's Address: _____

Witness's Signature: _____
Witness's Address: _____